IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

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| IN RE: | ) | In Proceedings |
| | ) | Under Chapter 7 |
| BILLY JOE KELLY and | ) | |
| SHELLY CARLOTTA KELLY, | ) | No. BK 95-40693 |
| | ) | |
| Debtor(s). | ) | |

OPINION

This matter is before the Court on the motion of Charter Bank, a secured creditor, to compel the debtors to perform their statement of intention pursuant to 11 U.S.C. § 521(2)(B). The facts are undisputed. The debtors filed their voluntary Chapter 7 petition on July 27, 1995. On Schedule D of their petition, the debtors listed a debt to Charter Bank that was secured by a first mortgage on residential property. The debtors have no equity in the secured property.

Contemporaneously with the petition, the debtors filed their statement of intention to surrender the property subject to Charter Bank's mortgage. At their 341 meeting on August 25, 1995, the debtors informed the Chapter 7 trustee that they had placed their residential property for sale with a commercial real estate broker in Sparta, Illinois. They further stated that they had abandoned the property and that the keys to the property were in the possession of the real estate broker.

Charter Bank tendered a quit claim deed to the debtors' attorney, who refused to permit his clients to execute the deed unless the Bank agreed to pay the sum of $500 to the debtors. Charter Bank declined to do so. The attorney for the Bank contacted the Chapter 7 trustee and received her permission and approval to file the motion to compel. On

September 28, 1995, Charter Bank filed its motion to compel the debtors to comply with their statement of intention to surrender the subject real estate. The debtors filed a response to the motion to compel in which they argued, without citation of legal authority, that they were not required by § 521(2)(B) to convey title to the real estate secured by Charter Bank's mortgage and that the Bank was obliged to file a motion for relief from stay or await the trustee's abandonment of the property in order to pursue its state law remedies to recover the property. The debtors further asserted that even if they were in violation of § 521(2)(B), the Bank, as secured creditor, had no standing to enforce the debtors' obligations under this provision.

The Court heard argument on Charter Bank's motion to compel on October 10, 1995. The trustee subsequently filed a "no asset" report in the debtors' bankruptcy case, in which she formally abandoned the subject property.

DISCUSSION

Section 521(2)(A) provides that, within 30 days after filing a petition under Chapter 7, a debtor must file a statement of intention with respect to the retention or surrender of secured property. See 11 U.S.C. § 521(2)(A). Section 521(2)(B) further provides that within 45 days after the filing of such statement of intention, or within such additional time as the court permits, "the debtor shall perform his intention with respect to such property . . . . " 11 U.S.C. § 521(2)(B) (emphasis added).

The debtors in this case have not requested an extension of time in which to perform their intention to surrender the real estate

subject to the Bank's mortgage. In fact, by the time of the 341 meeting, which was less than 30 days following the filing of their petition, the debtors had vacated the property. At that time, however, and up through the date of the hearing on October 10, 1995, the debtors were still exerting legal control over the property by maintaining a listing agreement with a real estate broker for sale of the property.

The debtors argue that their actions were sufficient to constitute a surrender of the property as required by § 521(2)(B). The Court does not agree. While both the words "abandon" and "surrender" are used throughout the Bankruptcy Code, their meaning is not synonymous. In the context of § 521, use of the word "surrender" rather than the word "abandon" indicates that a debtor must do more than simply abandon secured collateral in order to perform as required under subparagraph (B). The American Heritage Dictionary defines "surrender" as "to relinquish possession or control to another." In this case, although the debtors have abandoned possession of the property, they have maintained legal control over the property by listing it with a realtor of their choosing who has custody of the keys to the premises. The debtors have done nothing to improve the position of the secured creditor, Charter Bank, with respect to this property or to facilitate transfer of the property to the Bank. The Court finds, accordingly, that the debtors' conduct does not constitute surrender of the property as required by § 521(2)(B).

Contrary to the debtors' assertion at the hearing on October 10, 1995, they were not legally prohibited from executing a quit claim deed

to the property prior to the trustee's abandonment of the property from the debtors' estate. Execution of a quit claim deed by the debtors would merely have transferred whatever interest they had in the property and would not have affected any interest held by the trustee on behalf of the estate. In any event, the trustee has now abandoned the subject property from the debtors' estate, rendering this objection moot.

The Court has reviewed the authority submitted by the debtors following the hearing and finds that, to the extent such authority questions the status of a secured creditor to seek enforcement of § 521(2)(B), it is inconsistent with the position taken by the 7th Circuit in In re Edwards, 901 F.2d 1383 (1990). See In re Chavarria, 117 B.R. 582, 585 (Bankr. D. Colo. 1990) (applying Edwards). The Court specifically finds that a secured creditor has standing to file a motion to compel debtors to perform their previously filed statement of intention with respect to collateral serving as security for the creditor's claim.

Bankruptcy courts are courts of equity. The debtors have come into this Court seeking the benefit of its equitable powers, yet they attempt to use these powers not as a shield of protection but as a sword to coerce the secured creditor, Charter Bank, into incurring expense to obtain property which the debtors have stated they will voluntarily relinquish.

Section 105 of the Bankruptcy Code permits the Court to issue any order necessary and appropriate to carry out the provisions of the Code. Under the circumstances here presented where the debtors have

filed a statement of intention to surrender secured real estate in which they have no equity or other interest and the secured creditor, with the trustee's approval, has tendered a quit claim deed for the debtors' signature, the Court finds that the debtors are required to execute such quit claim deed to assist the secured creditor in obtaining clear title to the property.[1] In addition, the debtors are required to surrender the keys to the property and take such other steps as are necessary to relinquish actual possession and control to the secured creditor.

SEE WRITTEN ORDER

ENTERED: **NOVEMBER 2, 1995**

/s/ KENNETH J. MEYERS
U.S. BANKRUPTCY JUDGE

[1] In this case, the quit claim deed was prepared by the secured creditor, and there is no evidence of any expense to the debtors. This Court's ruling is not meant to impose upon debtors the duty to incur expense in preparing a quit claim deed or to incur other legal costs in performing their statement of intention.